

Chesapeake Bay Exception CBE-11-134: 132 Nottinghamshire - Adams

Staff report for the July 13, 2011 Chesapeake Bay Board Public Hearing (*Revised for the December 14, 2011 Chesapeake Bay Board meeting.*)

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Existing Site Data & Information

Applicant: Woody Crawford

Land Owner: James Adams

Location: 132 Nottinghamshire

Parcel: Lot 30, Section 12, Ford's Colony Subdivision

Parcel Identification: 3233100030

Lot Size: 0.43 acres

RPA Area on Lot: 0.35 acres or 81.4% of the lot (wetlands plus RPA), 0.26 acres or 60.4% of the lot (RPA only)

Watershed: Powhatan Creek (HUC Code JL31)

Proposed Activity: Clearing, filling, and grading for a backyard

Proposed Impacts

Impervious Area: 0 square feet

RPA Encroachment: 6,000 square feet to the seaward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Woody Crawford, agent for Mr. and Mrs. James Adams, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a single family residence and clearing, filling and grading a backyard at 132 Nottinghamshire, in the Ford's Colony Subdivision. The lot was platted between 1990 and 2004 and an RPA was determined to exist after the 2004 revisions to the Chesapeake Bay Preservation Ordinance. As the single family residence is within the landward 50 foot RPA buffer, according to Section 23-7 (c) (2), it may be allowed through an administrative process. The clearing, filling, and grading of the backyard is within the seaward 50 foot RPA buffer and does not qualify for an administrative exception, according to the same section.

On or about May 26, 2011 an application was submitted for lot development. The application was for the principal structure (house and deck) and backyard area. At that time, staff reviewed the application and made decision that due to the backyard RPA seaward impacts that the entire application should go through the formal (Chesapeake Bay Board) process. On or about June 2, 2011, Mr. Crawford visited the County office to discuss with the Director of Engineering and Resource Protection, Mr. Scott Thomas, options available with this application in order to keep home construction from being delayed. The owner and owner representative had an option to either delay the case until the next available Chesapeake Bay Board hearing, or revise the application to avoid any impact to the 50 ft. seaward RPA buffer so that the principal structure and deck could be processed administratively and remaining accessory components could subsequently follow by the formal exception process. The applicant chose the latter. The limits of work on the site plan was revised to reflect this intent and signed and initialed by both the applicant and County Engineering and Resource Protection Division Director. In addition, conditional language was written into the administrative approval for the principal structure using the County standard Sensitive Area Activity Application (SAAA) form. Conditional approval on the SAAA form stated the following: *“Approval does not authorize work in the 50’ RPA buffer zone, except for limited 10’ +/- for principal structure construction. Encroachment into 50’ RPA will be handled by subsequent Bay Board case. Surety for this application 7-14-21 will be handled in Bay Board case. Also authorize steep slope impact in revised limits of work.”*

On or around June 20, 2011 County compliance inspection staff observed clearing activities on the entire lot, not just what was authorized under the administrative approval, and clearing was beyond the defined limits of work on the approval. At this time, the lot is entirely cleared, grubbed and the house construction has begun. This clearing activity came about after the original start of processing of the Chesapeake Bay Board case. As such, this formal exception case is now considered to be an “after-the-fact” exception application.

The mitigation plan for the proposed impacts was submitted to Staff on September 29, 2011 and includes eleven canopy trees, twenty-one understory trees, and thirty-three shrubs. The mitigation proposal as submitted does not meet standard mitigation requirements for the impacts. The mitigation proposal is deficient two canopy trees, five understory trees, and six shrubs. As such the mitigation plan must be revised to meet the minimum standard.

In addition to the proposed mitigation plan, the applicant has demarcated the area where sod will be placed to reduce run-off velocity into the seaward 50’ RPA buffer. An organic mulch (pine needles) are proposed to be placed in all other disturbed areas within the previously cleared seaward 50’ RPA buffer.

Staff Recommendations

The original issue before the Board is the clearing, filling, and grading of a rear yard with zero square feet of impervious area within the seaward RPA buffer. An additional issue is now before the Board because of the advanced clearing, filling, and grading of the seaward 50’ RPA buffer prior to approval. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14 (c) of the Ordinance. There are five review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met. There are several options available to the Board:

1. Approval of the application with the mitigation as outlined within the submitted mitigation plan with an additional condition requiring the applicant to meet the standard mitigation rate (13 canopy, 26 understory, 39 shrubs) as adequate, revised mitigation plan to be submitted within 15 days of the public hearing; or
2. Approval of the application with double the mitigation as outlined for the house construction (14 canopy, 28 understory, 42 shrubs) as adequate, revised mitigation plan to be submitted within 15 days of the public hearing; or
3. Either option 1 or 2 above plus payment into the Chesapeake Bay Mitigation Fund of a dollar amount to be set by the Board. Staff suggests the Board use the matrix to determine the contribution amount; or
4. Either option 1 or 2 above plus direct staff to pursue a Chesapeake Bay Preservation Ordinance civil charge violation under Section 23-18 (b). Staff would suggest maximum fines because of the blatant nature of the violation and the impact to water quality; or
5. Direct staff to pursue a Chesapeake Bay Preservation Ordinance civil penalty violation under Section 23-18 (a) and full restoration of the seaward 50' RPA buffer with a mitigation plan to be submitted within 15 days of the public hearing; or
6. Denial of the application and full restoration of the seaward 50' RPA buffer, mitigation plan to be submitted within 15 days of the public hearing; or
7. Some other combination satisfactory to the Board.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary local permits as required for the project.
2. The mitigation plan shall be amended to include a total of thirteen (13) native canopy trees, twenty-six (26) native understory trees, thirty-nine (39) native shrubs, and the placement of an organic mulch capable of reducing run-off velocity no less than four inches thick in the previously cleared 50' seaward buffer.
3. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
4. Mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c) satisfied through a surety of \$4,000 in a form satisfactory to the County Attorney.
5. This exception request approval shall become null and void if not completed by December 14, 2012.
6. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

Background

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance and the house is currently under construction. As the proposed backyard is within the seaward 50' RPA buffer, it cannot be administratively reviewed and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the Chesapeake Bay Board following public hearing under the formal exception process. The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the establishment of a backyard 6,000 square feet in size.

Recent Activity since Previous Board Hearing

Since the initial hearing of this case at the July 13, 2011 Board meeting, home and deck construction has begun and progressed. Erosion and sediment controls are in place in compliance with State and Local regulations to minimize sediment run-off into adjacent areas. Within the previous cleared areas beyond the seaward 50' RPA buffer line volunteer vegetation has established itself, albeit sparse in nature. Photos of the current conditions are included within the Staff presentation to be displayed at the December 14, 2011 Chesapeake Bay Board Meeting.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a County *Sensitive Area Activity Application* and a required mitigation plan, both of which are included in the case report packet. The map provided shows features of the proposal along with a mitigation plan for native plantings.

Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-134 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-134 are included for the Board's use and decision.

Staff Report prepared by:

Michael D. Woolson
Senior Watershed Planner

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments: Sensitive Area Activity Application
Mitigation Plan